



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN - 9 2011

Edward F. Borden, Jr., Esquire
Earp Cohn P.C.
20 Brace Road, 4th Floor
Cherry Hill, NJ 08034

RE: MUR 6400
Geoff Mackler
John H. Adler
Adler for Congress and Richard J. Sexton, in
his official capacity as treasurer

Dear Mr. Borden:

On October 26, 2010, the Federal Election Commission notified your clients listed above of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, on June 6, 2011, the Commission took the following actions:

1. Find no reason to believe Geoff Mackler violated 2 U.S.C. § 441a(a);
2. Find no reason to believe John H. Adler violated 2 U.S.C. § 441a(a); and
3. Dismiss the allegations that Adler for Congress and Richard J. Sexton, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a) and 434(b).

Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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If you have any questions, please contact April J. Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6400

RESPONDENTS: Adler for Congress and Richard J. Sexton, in his official
capacity as treasurer
John H. Adler¹
Geoff Mackler

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the New Jersey Republican State Committee. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that Adler for Congress and Richard Sexton, in his official capacity as treasurer ("Adler Committee"), the principal campaign committee of former Congressman John H. Adler, made and failed to disclose excessive in-kind contributions to Peter DeStefano for Congress ("DeStefano Committee"), the principal campaign committee of Peter DeStefano. Both Adler and DeStefano were candidates in the 2010 General Election for U.S. House of Representatives in the 3rd Congressional District of New Jersey; Adler was the Democratic nominee and DeStefano, running under the slogan "NJ Tea Party," qualified for the ballot by filing a petition for direct nomination on June 8, 2010.²

Under the Federal Election Campaign Act of 1971, as amended, ("the Act") no person may make a contribution to a candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds \$2,400 during the 2010 election

¹ Mr. Adler died on April 4, 2011.

² Mr. Adler and Mr. DeStefano both lost the 2010 General Election, with 47% and 1% of the vote, respectively.

1 cycle, and no candidate or authorized political committee may knowingly accept such a
2 contribution. 2 U.S.C. §§ 441a(a)(1) and (f).³ The Act defines "contribution" as the provision of
3 something of value "for the purpose of influencing any election for Federal office," and includes
4 the "payment by any person of compensation for the personal services of another person which
5 are rendered to a political committee without charge for any purpose." 2 U.S.C. §§ 431(8)(A)(i)
6 and (ii). *See also* 11 C.F.R. § 100.52(d). Treasurers of political committees are required to
7 disclose all contributions. 2 U.S.C. § 434(b).

8 Based on two attached published reports, the complaint alleges that consultant Haddon
9 Capital Ventures, LLC ("HCV"), its owner, Steve Ayscue, and the Adler Committee's campaign
10 manager, Geoff Mackler, were each compensated by the Adler Committee to assist DeStefano's
11 petition drive. As a result, according to the complaint, the Adler Committee made unreported
12 contributions to the DeStefano campaign pursuant to 2 U.S.C. § 431(8)(A)(ii). According to one
13 published report, Ayscue recruited a then unidentified man (later identified as DeStefano) to run
14 as a third party candidate to draw votes from Adler's Republican opponent. *See Dems Picked*
15 *Spoiler Candidate*, www.CourierPostOnline.com, October 8, 2010. The report also states that
16 Ayscue recruited volunteers to collect petition signatures to place the third party candidate on the
17 ballot. *Id.*

18 The Adler Committee disclosed no contributions to the DeStefano Committee, and the
19 DeStefano Committee did not disclose the receipt of any contributions from the Adler

³ Any contribution from the Adler Committee to DeStefano would be subject to the \$2,000 limit in 2 U.S.C. § 432(e)(3)(B).

1 Committee, or from any of the individuals allegedly working to support or assist DeStefano in
2 ballot efforts.

3 The Adler Response submitted jointly by former Congressman John H. Adler, the Adler
4 Committee's treasurer, and Geoff Mackler, the Adler Committee's campaign manager, denies
5 that Adler or his campaign supported or assisted the DeStefano campaign in any way, that they
6 made any in-kind contributions to DeStefano, and that there was any coordination between the
7 Adler and DeStefano campaigns. Adler Response at 2. In addition, the Adler response
8 maintains that the complaint is insufficient because it relies on published reports that cite only
9 anonymous sources. See Adler Response at 2. Neither of the published reports directly
10 implicate former Congressman Adler or the Adler Committee apart from the alleged presence of
11 the Committee's campaign manager, Geoff Mackler, at the May 2010 evening meeting. That the
12 Adler Committee paid Mackler, as alleged in the complaint, both before and after that meeting, is
13 not particularly probative, since Mackler was then employed as its campaign manager.

14 Based on the available information, including that neither of the alleged participants,
15 Messrs. Mackler and Ayscue, have denied their involvement in efforts supporting the DeStefano
16 campaign, it appears that there may have been an in-kind contribution from the Adler Committee
17 to the DeStefano campaign. See 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d). However, even
18 if Messrs. Mackler and Ayscue sought volunteers at one event to assist with the DeStefano
19 campaign, the value of any resulting in-kind contribution from the Adler Committee, as payor of
20 these individuals' salary and consulting fees, would be both difficult to measure and
21 insubstantial.

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1 The complaint also alleges that Ayscue operated DeStefano's website, Twitter account,
2 and Facebook page. The second published report upon which the complaint relies, however,
3 states only that an unidentified "county Democratic employee is running at least the Web
4 elements of DeStefano's campaign." See Complaint, Exhibit 2. The Adler Response did not
5 address this allegation. Even if Ayscue ran the DeStefano campaign's web activities, a review of
6 the sites themselves suggests that any resulting in-kind contribution would be minimal.

7 In view of the above, the Commission exercises its prosecutorial discretion and dismisses
8 the allegation that Adler for Congress and Richard J. Sexton, in his official capacity as treasurer,
9 violated 2 U.S.C. §§ 441a(a) and 434(b). See *Heckler v. Chaney*, 470 U.S. 821 (1985).

10 As for Geoff Mackler, he does not appear to have personally made a contribution to the
11 DeStefano Committee since he is not alleged to have made any payments and his support for the
12 Committee, if any, was conducted in his role as the Adler campaign manager. Therefore, the
13 Commission finds no reason to believe that Geoff Mackler violated 2 U.S.C. § 441a(a).

14 With respect to John H. Adler, the available information does not suggest any liability on
15 his part. Therefore, the Commission finds no reason to believe that John H. Adler violated
16 2 U.S.C. § 441a(a).

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